9. Quieting Title (§ 29*)—One Remaining Silent, and Not Protecting Title to Land, Until Evidence Is Destroyed, Is Barred from Relief.—While mere lapse of time or inaction by owner with clear record title without adverse possession will not defeat title, yet unexplained and unreasonable delay, with adverse claims and facts and circumstances brought home to the legal title holder, and his failure to act for such time as to destroy all of the evidence of the original transaction out of which adverse claims arose, will bar relief by removal of cloud after the rights and equities of others have supervened.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 245.]

10. Executors and Administrators (§ 149*)—Heirs Held Not Entitled to Attack Deed of Executor without Accounting for Proceeds of Sale Inherited by Their Ancestors.—Heirs, seeking to overthrow executor's deed given without authority, who are heirs of such executor, so that, if executor did not account to their ancestors, they must have received such proceeds through descent from executor, cannot successfully assert title to the property without accounting for the proceeds of sale.

11. Executors and Administrators (§ 149*)—Heir under Whom Complainants Claim Held to Have Ratified Executor's Sale.—In a deed of executor, who was the husband of their ancestor, facts held to show that such ancestor was not merely silent, but expressly and conclusively ratified the sale and received the benefits, so that heirs are barred.

Appeal from Circuit Court, Brunswick County.

Suit by Joseph B. Green and others against the Camp Manufacturing Company and others. From a decree, the named defendant appeals. Reversed and rendered.

E. P. Buford, of Lawrenceville, for appellant.

E. F. F. Wells, of Norfolk, *B. A. Lewis,* of Lawrenceville, and *Plummer & Bohannon,* of Petersburg, for appellees.

CITY OF CLIFTON FORGE *v.* VIRGINIA WESTERN POWER CO.

March 17, 1921.

[106 S. E. 400.]

1. Electricity (§ 11*)—Franchise Covering Night Electric Light Service Held Not to Cover Day Service Also.—Where the franchise of an electric light and power company required it only to furnish incandescent lights "at all hours from sunset to sunrise, or as much earlier or as much later as weather conditions make it necessary,"

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the franchise did not cover both night and day service in respect to compensation to be charged, notwithstanding that the company in fact had also been furnishing day service.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 553.]

2. Estoppel (§§ 62 (2), 78 (1)*)—That Electric Light Company Furnished Additional Service Held Not to Estop It from Claiming that the Franchise Did Not Cover Such Additional Service.—Where a light and power company operating under a franchise covering night service had for more than 10 years also furnished day service, such fact held not to estop the company from denying that the franchise covered day service also, and the police power of the state as exercised through the State Corporation Commission could not be ousted by such an estoppel in pais operating on the parties.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 231.]

3. Appeal and Error (§ 1097 (1)*)—Adverse Decision on Former Hearing of Same Case Not Subject to Review.—A contention fully considered and answered adversely to appellant on a former hearing of the same case is not subject to review on appeal.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 651.]

4. Electricity (§ 11*)—State Corporation Commission May Fix Rates for Electric Service Not Covered by Franchise.—Where the use of streets, alleys, and other public property in a city for the purpose of furnishing electric service has been in existence without objection on the city's part for over 10 years, but no rate therefor has ever been fixed by contract, the State Corporation Commission may under Act March 27, 1914 (Laws 1914, c. 340), as amended (Laws 1918, c. 407), fix rates therefor, the act of the Commission being not a determination of rates for a use already in existence.

[Ed. Note.—For other cases, see 15 Va.-W. Va. Enc. Dig. 223, 224.]

5. Electricity (§ 11*)—State Corporation Commission May on Its Own Motion Alter Rates Schedules and Substitute Rates for Light and Power Deemed Just and Reasonable.—The State Corporation Commission may on its own motion or on complaint of a proper party alter schedules of electric light and power rates filed before it and substitute therefor such rates as it may deem just and reasonable in view of Code 1919, §§ 4058—4073.

[Ed. Note.—For other cases, see 15 Va.-W. Va. Enc. Dig. 223, 224.]

6. Electricity (§ 11*)—Procedure for Fixing Light and Power Rates Held to Provide Reasonable Opportunity for Hearing on Part of City.—Since under Code 1919, § 4071, it is the duty of the State Corporation Commission to fix and order substituted for electric light and power rates filed, such rates as shall be just and reasonable, such

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

procedure gives a city wherein the light and power company is operating ample opportunity to be heard as to the justness and reasonableness of the rates charged.

[Ed. Note.—For other cases, see 15 Va.-W. Va. Enc. Dig. 223, 224.]

Appeal from State Corporation Commission.

Petition by the Virginia-Western Power Company before the State Corporation Commission for permission to withdraw in the City of Clifton Forge electric light and power service or for a determination of adequate service and to fix rates therefor. From the order of the Commission, the City appeals. Affirmed.

O. B. Harvey, of Clifton Forge, for appellant.

F. W. King, of Clifton Forge, for appellee.

CITY OF RICHMOND *v.* CARNEAL et al.

March 17, 1921.

[106 S. E. 403.]

1. Constitutional Law (§ 38*)—Constitutionality Depends upon What May Be Done under Statute.—The test of the validity of a statute claimed to be unconstitutional is, not merely what has been done under it, but what may be done under it.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 180, 181.]

2. Eminent Domain (§ 66*)—Whether Land Is Taken for a Public Use Is a Judicial Question for the Court.—The question of the necessity, propriety, or expediency of resorting to the exercise of the power of eminent domain is a legislative function, in the absence of a constitutional inhibition, but the question of what constitutes a "public use" within the rule that private property can be taken only for a "public use" is a judicial question to be decided by the courts, not as a matter of discretion, but in the exercise of sound judgment under the facts and circumstances of a particular case.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 77.]

3. Constitutional Law (§ 52*)—Legislature Cannot Conclude Constitutionality of Its Statutes.—The Legislature cannot conclude the constitutionality of its enactments.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 150.]

4. Eminent Domain (§ 13*)—Private Property Can Be Taken Only for Public Use.—Under the Constitution, the power of eminent domain is limited to the taking or damaging of private property for public use.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 77.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.